

Our ref Sarah Murphy

30 June 2016

The Chief Executive
Ministry of Business, Innovation and
Employment

Attn: Geoff Conner
societies@mbie.govt.nz



Dear Mr Smol

Consultation on Incorporated Societies Bill

Thank you for the opportunity to comment on the draft Incorporated Society Bill.

Clause 184

This submission relates to clause 184, which seeks to override the Official Information Act 1982 (OIA) and Privacy Act 1993 with respect to information relating to current and proposed inspections under section 182.

Clause 184(2) provides that the Minister, Chief Executive or Registrar may refuse to disclose a document, information or report in his or her possession obtained in making an inspection under clause 182, until the purpose for which the inspection is carried out has been satisfied.

Clause 184(3) further provides an ability to withhold information as to whether or not a section 182 inspection is occurring or proposed unless *'the disclosure of that information would not be likely to prejudice the commercial position of any person'* and *'there is no other good reason for withholding that information under that Act'*. This reverses the presumption of availability under the OIA.

Clause 185 provides a limited appeal right through the Courts.

Discussion

We have concerns that the proposed provisions undermine the freedom of information principles enshrined in the OIA.

We consider that the withholding provisions of the OIA are sufficiently comprehensive and robust to address any prejudice that might arise from release of information relating to a current or upcoming inspection under clause 182 of the Act.

We note that clause 182 is modelled on section 367 of the Companies Act.

In considering this clause, we consulted the MBIE Principal Advisor responsible for the Bill, Geoff Conner. He agreed that the OIA should govern the relevant material and that the clause was unnecessary. He advised that in the course of our consultation on the Bill, he had discussed the

clause with the relevant registry staff at the Companies Office, who advised that they were not aware of the parallel clause in the Companies Act having ever been used. He indicated an intention to remove clauses 184 and 185 from the Incorporated Societies Bill. He also advised MBIE would likely seek to have section 367 of the Companies Act repealed, when an appropriate legislative vehicle arose, on the basis that it was outdated and unnecessary. He asked that our views and that discussion be recorded in a submission for the record.

We appreciate Mr Conner's agreement to remove clauses 184 and 185 from the Bill, and also support the proposed repeal of the parallel sections of the Companies Act.

If you wish to discuss this further, please feel free to contact Principal Adviser Sarah Murphy on (09) 300 4200, or email her at sarah.murphy@ombudsman.parliament.nz

Yours sincerely

A handwritten signature in black ink, appearing to be 'EL', written in a cursive style.

Emma Leach
Assistant Ombudsman